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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Creation of a Low Power Radio Service) MM Docket No. 99-25
)
To: The Commission)

COMMENTS OF PRETTYMAN BROADCASTING COMPANY

Prettyman Broadcasting Company ("Prettyman") files these Comments in response to the Notice of Proposed Rulemaking ("NPRM") on the creation of a low power radio service ("LPFM").

INTRODUCTION

Prettyman is a small, single-majority-shareholder-owned broadcasting company that operates three radio stations (one AM and two FMs) in the Martinsburg, West Virginia radio market. Prettyman's majority shareholder is a veteran broadcaster with forty-two years experience in the industry. Based on this experience, Prettyman is concerned that LPFM may be the biggest mistake ever to impact the radio industry. Prettyman strongly urges the Commission not to implement LPFM because to do so would (1) increase interference in the FM spectrum, (2) fail to increase diversity in FM broadcasting and (3) merely repeat a mistake made by the Commission nearly twenty years ago.

I. The Commission Should Not Overturn Twenty Years of Precedent Without Considering the Impact on Interference Protection.

For the past two decades, the Commission has consistently refused to authorize low power FM stations. The Commission has steadfastly relied on the fact that full power stations

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make more efficient use of the spectrum than their low power counterparts¹ For example, in the late 1970s, the Commission demonstrated its preference for spectrum efficiency by requiring all low power Class D noncommercial FM stations to upgrade to full power stations and refusing to accept applications for new Class D FM stations.² The Commission renewed its commitment to spectrum efficiency and full power radio in 1990, when it refused to authorize the operation of FM translators on a primary basis.³

The Commission has historically rejected low power FM stations because of the likelihood of interference to full power FM stations. Yet now, when proposing to overturn twenty years of policy, the Commission introduces no evidence demonstrating that the likelihood of interference from LPFM stations has recently abated or that the introduction of a new LPFM service is now justified. Currently, the FCC allocates stations using specific criteria for interference protection. The NPRM would eliminate these protections to provide room for LPFM. In fact, the NPRM simply proposes to authorize new LPFM stations without first conducting any studies on the effect of LPFM stations on existing FM stations. Instead, the NPRM, just assumes away the laws of physics that govern radio signal propagation and receiver reception.

In addition, because the Commission's plan does not call for any tests on whether LPFM stations can be authorized without causing interference to radio reception by listeners, the Commission will not be able to reverse course should LPFMs cause massive interference.

¹ Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, *Notice of Inquiry*, MM Docket No. 88-140, 3 FCC Rcd 3664, 3668 (1988).

² *Id.*

³ Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, *Report and Order*, MM Docket No. 88 – 140, 5 FCC Rcd 7212, 7213 (1990) (“We are aware of the need to clarify and amend several rules in order to ensure that FM radio broadcast stations are not adversely affected by translator operations.”).

Therefore, Prettyman urges the Commission to conduct extensive studies of the potential impact of LPFM on existing FM stations while continuing its longheld policy of protecting existing stations from interference.

In contrast to the NPRM, a study conducted by the National Association of Broadcasters (“NAB”) indicates that LPFM stations, as proposed, will cause interference with existing full power stations. According to the study, if new second- or third-adjacent channel stations are permitted inside an existing station’s protected coverage area, the new LPFM stations will cause harmful interference to signal reception by existing listeners. This study indicates that the Commission cannot eliminate the second- and third-adjacent channel protections in order to establish LPFM service.

As demonstrated by the NAB study, interference by LPFM stations is likely even assuming that LPFM operators transmit within the limits of their licenses. The Commission, however, has proposed to allow individuals that have already demonstrated an unwillingness to follow Commission policy to obtain licenses for LPFM. To put it bluntly, the LPFM proposal is a reward to pirate broadcasters who have been violating the law. In fact, the Commission proposal to allow “rehabilitated” pirate broadcasters to obtain LPFM authorization increases the risk of interference from LPFM stations. This risk is exacerbated by the fact that the Commission primarily relies on statements made by individual broadcasters themselves in the Commission’s enforcement efforts. Former pirate broadcasters may be more likely to exceed the transmission limits mandated by their licenses given the Commission’s dependence on self-certification.

Prettyman urges the Commission to continue its historical policy of protecting current full power FM stations from interference by less efficient low power stations.

II. Authorizing LPFM Stations Would Not Result in the Commission's Goal of Increasing Broadcast Diversity.

The Commission states that LPFM stations would increase the diversity of radio ownership and programming. Thus, the Commission seems to be attempting to reverse the effects of consolidation in the radio industry, which the Commission simply assumes resulted in less diversity. Even if there were less diversity (which Prettyman does not believe, as discussed below), the Commission's proposal to establish a low power radio service would not increase the amount of diversity in the radio industry. The NPRM asserts that the introduction of LPFM service will allow more minorities and nontraditional programmers to own successful radio stations. Even though this assertion is initially attractive, upon closer examination it is seriously flawed.

The Commission's proposal contains no guarantee that minorities and women will want or actually receive a license for an available LPFM station. As discussed below, the questionable economic viability of such a station will likely (or should) dissuade many minorities and women from seeking licenses. Furthermore, even if minorities and women did attempt to obtain a license, there is no assurance that they would receive such a license, regardless of whether licenses are allocated on a first-come, first-serve basis or through an auction. Finally, even if minorities and women did obtain licenses for LPFM stations, the Commission cannot guarantee that the resulting programming would add diversity to FM radio.

Even if minorities and women obtain licenses for LPFM stations, and offer diverse programming, the ultimate success of LPFM stations will depend on the free market. Although initially purchasing or establishing an LPFM station may be less expensive than a full power station, it will be difficult for an owner of an LPFM station to be financially viable in the long-run. Similar to full power stations, LPFM stations will have high operating costs for equipment and production. Also like full power stations, LPFM stations will receive revenue primarily

through advertising, the amount of which will be determined by the number of listeners the station has. Unlike full power stations, though, LPFM stations' signals will only reach a small number of listeners, which will have an adverse effect on the amount of advertising revenue they can generate.⁴ While the costs of operating an LPFM station will compare to the cost of operating a full power station, an LPFM station will not be able to receive the same revenue as its full powered counterpart. Furthermore, the Commission is proposing to stretch the spectrum to its limit in order to authorize as many LPFM stations as possible. A large number of LPFM stations in the market will create a glut of FM stations, making it more difficult for any of them to be financially viable and succeed in the radio market. In fact, under the current FCC rules, FM channels are still available in rural areas. One reason channels are still available in these areas is because rural stations are not as economically viable; this holds true for LPFM stations.

In addition, the Commission proposes to prohibit current FM station owners from owning LPFM stations. Current owners are more likely to have the radio broadcast experience that can increase the likelihood of success of an LPFM station, while those new to the industry may have a more difficult time establishing themselves, particularly given the highly competitive field that the Commission proposes to create. If LPFM stations cannot survive in the market, they will be unable to provide any programming, let alone contribute to the diversity of radio programming.

III. The Commission is Simply Repeating a Mistake from Twenty Years Ago.

In Docket 80-90, the Commission allocated a host of new radio station channels across the country, which resulted in a significant increase in the number of radio stations nationwide and in each market. Because of the highly competitive nature of the radio industry, the Commission's action resulted in too many radio stations in the market, given the economic

⁴ This problem will only be exacerbated by the interference problems discussed in the preceding section. Interference between LPFM stations will make airtime on these stations even less

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support base. Many of these stations struggled throughout the following decade, and many stations folded. Prettyman's majority shareholder witnessed and survived this glut to the market.

In order to remedy its mistake and boost the economic viability of FM radio, the Commission was forced to relax ownership regulations, and Congress eventually loosened local ownership restrictions even further. The relaxation of ownership rules triggered a number of mergers and acquisitions that resulted in significant consolidation in the radio market. In fact, the market is significantly more consolidated today than it was prior to the Commission's attempt at increasing broadcast diversity in Docket 80-90. It is harder now to make a living in radio, not easier.

The Commission's proposal to establish a low power radio service is nearly identical to its actions in Docket 80-90. In the name of increasing the diversity of the broadcast industry, the Commission again risks flooding the market with too many radio stations. The scenario calls to mind a lifeboat, which if properly loaded, will carry each person to safety, but which will risk the lives of all aboard if overloaded. LPFM licensees who have invested significant sums of money into a radio station with little chance of success will undoubtedly be harmed by their inability to compete with large group owners or with savvy smaller broadcasters with survival skills. Prettyman is concerned that the Commission may inadvertently be "setting up" LPFM for failure.

Ultimately, however, the party most injured by LPFM will be the public. Currently, the public benefits from the availability of the widest variety of stations and station formats in the history of broadcasting. There are now approximately 13,000 radio stations in the U.S. (3,500 which have been added since 1980). In most major markets, there are formats devoted solely to

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valuable to advertisers and may make them hesitant to advertise on the station at all.

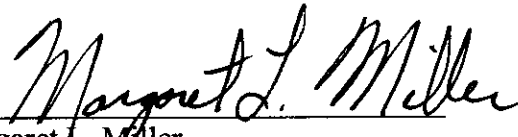
news, talk, business, sports, children, religion, etc. In fact, there are now more than 500 Spanish language stations in the U.S. – the highest number ever. A significant number of these stations are quite successful and able to commit significant resources to providing their listeners with the best programming available. If an overabundance of radio stations enters the market, a listener may have a higher number of stations to choose from for a while, however, the stations will not have the resources to provide high quality programming and to upgrade equipment as necessary. By overwhelming the market with too many radio stations, the Commission risks creating a radio market with a large number of financially struggling stations that are unable to invest in the quality equipment and programming required to deliver high quality radio.

IV. Conclusion

While the Commission's goal to increase the diversity of radio programming is commendable, its proposal to establish low power radio service will not accomplish that goal. Instead, LPFM threatens to undermine the success of FM radio. Based on the available evidence, LPFM stations will cause interference with existing full power FM stations, as well as with other LPFM stations. In addition, because the Commission cannot guarantee that minorities or women will obtain LPFM stations, and because the economic viability of LPFM stations is questionable, it is unlikely that LPFM stations will contribute to broadcast diversity. Finally, the Commission has gone down this road before in Docket 80-90, and there is no reason to expect that flooding the market with LPFM stations will have any more of a positive impact than flooding the market with full power stations did nearly two decades ago. Accordingly, Prettyman strongly urges the Commission not to establish a new low power radio service.

Respectfully Submitted,

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